

**A MEMORANDUM OF AGREEMENT
AMONG THE AGENCIES
INVOLVED IN THE IMPLEMENTATION OF
PART H OF THE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)
TO MEET FULL
IMPLEMENTATION REQUIREMENTS**

SEPTEMBER 1996

WHEREAS, the Commonwealth of Virginia remains fully committed to the design and implementation of an interagency, community-based, family-centered system of early intervention services for all eligible children and their families, recognizing that children are our most precious resource and represent the future hopes for Virginia and the nation; and

WHEREAS, the *Code of Virginia*, §§2.1-760, defines those charged with upholding this commitment as the Departments of: Health; Deaf and Hard of Hearing; Education; Medical Assistance Services; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; and the Visually Handicapped; the Department for Rights of Virginians with Disabilities; and the Bureau of Insurance within the State Corporation Commission; and

WHEREAS, it is recognized that early intervention services can reduce (1) the number of children that will require more costly special education services later, and (2) the amount and intensity of services needed later in life by children with disabilities; and

WHEREAS, the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services Board approved Policy 4037(CSB)91-92 on May 22, 1991, to further Virginia's commitment to the goals of the Part H Program; and

WHEREAS, the Commonwealth currently assures the availability of evaluation and assessment, the development of an Individualized Family Services Plan (IFSP), the provision of service coordination and the availability of all services contained in the IFSP to all eligible infants and toddlers and their families; and

WHEREAS, the Joint Legislative Subcommittee Studying Early Intervention Services for Infants and Toddlers with Disabilities, established by HJR 380 (1991), endorsed Virginia's continued participation in the Part H Program and supported state funding and state legislation to establish the interagency administrative structure necessary for Part H implementation (House Bill 817, 1992) and introduced House Joint Resolution 626 which was passed by the 1993 General Assembly expressing support for Virginia's movement into full implementation of Part H in September 1993; and

WHEREAS, Virginia currently serves all Part H eligible children who have been identified through child find efforts at both the state and local levels, and federal Part H funds enable the Commonwealth to serve these children and their families; and

WHEREAS, federal Part H dollars will continue to be available for 40 local interagency coordinating councils (ICCs) that are engaged in planning and implementation processes which are designed to coordinate maximum use of all available resources; and

WHEREAS, in addition to federal and other funds, Part H early intervention state dollars totaling \$125,000 annually have been appropriated by the General Assembly to assist localities in providing Part H services as established by local ICCs; and

WHEREAS, the Virginia Interagency Coordinating Council (VICC), as representative of parents, public and private agencies, and other relevant advocates, remains committed to continued full implementation of the early intervention program.

THEREFORE, The Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS); the Department of Education (DOE); the Virginia Department of Health (VDH); the Department of Social Services (DSS); the Department for the Visually Handicapped (DVH); the Department for Rights of Virginians with Disabilities (DRVD); the Department of Medical Assistance Services (DMAS); the Department for the Deaf and Hard of Hearing (VDDHH); and the Bureau of Insurance within the State Corporation Commission hereby reaffirm commitment to continued participation in and implementation of the federal Part H program. These agencies agree that implementation activities and the roles and responsibilities of all agencies, state and local, are determined by federal regulations 34 CFR Part 303, the Virginia Part H Policies and Procedures, and the provisions of the *Code of Virginia*, §§2.1-760 through 2.1-768 as amended and effective July 1, 1992, and other federal and state laws and regulations as may apply.

OBJECTIVES TO BE ACCOMPLISHED UNDER THIS AGREEMENT

- (1) To continue the full implementation of a statewide, community-based, family centered, interagency system of early intervention services for all eligible children and their families.
- (2) To continue to meet the full implementation requirements under IDEA, Part H program, according to 34 CFR Part 303, and as established through Virginia DMHMRSAS Board Policy 4037(CSB)91-92 and as described by the Virginia Part H Policies and Procedures.
- (3) To participate in the activities necessary to maintain continued participation under Part H and to complete systems activities necessary to ensure continued full implementation of the Part H program. These activities will include, among other things, the joint a) identification and coordination of all available public and private resources to ensure the availability of services; b) support of interagency joint requests for state revenues identified by local ICCs through the local planning process for early intervention; and c) participation in the dispute resolution process, the complaint procedures and all procedural safeguards policies and procedures as included in the Virginia Part H Policies and Procedures.

SLIDING FEE SCALES

With the exception of the services of child find, evaluation, development of the Individualized Family Service Plan (IFSP), and procedural safeguards that are required by federal regulation to be available at no cost to families, services listed on the IFSP may be provided subject to sliding fees established in accordance with federal and state law and Virginia Part H Policies and Procedures.

FINANCIAL MATTERS

Except as provided in 34 CFR 303.527, Part H funds may not be used to satisfy a commitment for services that would otherwise have been paid for from other public or private sources but for the enactment of Part H. In this regard, Part H funds are designated as the payor of last resort.

Resources and funding responsibilities for provision of services required under full Part H participation are determined at the local level through the ICC planning process. All 40 local ICCs use local policies and procedures which address the provision of public awareness and child find, evaluation and assessment, development of IFSPs, and the provision of service coordination and all services included in the IFSP. Maximum use of all third party funding sources, including Medicaid and Medicaid Managed Care plans and private insurance, is required. State planning efforts support and facilitate such resource determination.

Determination of local agency responsibility for the provision of entitled services is based upon eligibility criteria established by individual agency and the availability of services in each locality as specified in each council's local interagency agreement. DMHMRSAS as Lead Agency for Part H, however, is ultimately responsible for ensuring the availability of services to which a child and family is entitled, including multidisciplinary evaluation and assessment, development and implementation of the Individualized Family Service Plan (IFSP), and service coordination. Child find is a joint responsibility of DMHMRSAS and the Department of Education.

Individual agency services and eligibility criteria for the provision of services in localities follow.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Services Offered

The majority of Community Services Boards, which are local agencies receiving funds from DMHMRSAS, provide or contract for an array of early intervention services for disabled or at risk infants/toddlers and their families from birth through age two.

Services that are available include:

- implementation of child find activities;
- participation in the multidisciplinary evaluation and assessment;
- provision of service coordination;
- development of the Individualized Family Service Plan (IFSP);
- provision of assistive technology services and devices;
- provision of audiology;
- provision of family training, counseling, and home visits;
- provision of occupational therapy;
- provision of physical therapy;
- provision of speech-language pathology;
- provision of psychological services;
- provision of respite care;
- provision of social work services;
- provision of special instruction;
- provision of transportation and related costs;
- provision of medical services;
- provision of health services; and
- provision of nursing services.

Eligibility Criteria

Infants/toddlers, and their families, are eligible to receive early intervention services provided through the Community Services Board as specified in this agreement if the infants/toddlers meet Virginia's Part H Definition of Eligibility as outlined in Virginia's Part H Policies and Procedures.

Financial Responsibility

Local community services boards are obligated to fund and provide the specified early intervention services to the eligible population as set forth in local interagency agreements.

DEPARTMENT OF EDUCATION

Services Offered

The Department of Education accepts joint responsibility for child find as described in the "Child Find" section of this agreement. The Department of Education agrees to cooperate with other agencies and coordinate its efforts with regard to transition activities designed to meet the federal requirements of Part H, including the amendments made by P.L. 102-119, for children transitioning to other services from the Part H program. A local school system may choose to offer some or all of its services to children below the age of two. If a school system chooses to offer services to children below age two, these services should be specified in local interagency agreements. All services provided to children below age two must be in compliance with the federal requirements for Part H as interpreted in Virginia's Part H Policies and Procedures.

Eligibility Criteria

If local school divisions choose to serve infants and toddlers under the age of two and their families, those children shall meet Virginia's Part H Definition of Eligibility as outlined in Virginia's Part H Policies and Procedures.

Financial Responsibility

Financial responsibility for services provided by local school divisions will be determined through local interagency agreements.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Services Offered

Virginia Medicaid pays for medically necessary services that are ordered by a physician for persons determined to meet the Medicaid eligibility requirements. Services for which reimbursement is available are those approved in the State Plan for Medical Assistance Services. Under the Early Periodic Screening Diagnosis and Treatment program (EPSDT), reimbursement for non-state plan covered services may be obtained if the services are medically necessary, determined to be needed during an EPSDT screening, and are listed in Section 1905(a) of the Social Security Act. State Plan covered services include, but are not limited to, physician services, hospital services, physical therapy, occupational therapy, speech language pathology, home health, lab and x-ray services,

and care coordination for high risk infants up to age 2. Preauthorization may be required for some services.

Eligibility Criteria

Medicaid eligibility determinations are made by local social services departments. Recipients are eligible as "categorically needy" or "medically needy". Medicaid will not pay for care or services rendered before the beginning date of eligibility or after the end date of eligibility.

Financial Responsibility

By federal regulation, if the recipient has access to other health insurance, that payment source must be utilized before Medicaid reimbursement can be made.

DEPARTMENT OF SOCIAL SERVICES

Services Offered

Local departments of social services may provide the following services:

- **Child Find:** Local departments may participate in child find activities as agreed to by local councils.
- **Evaluation and Assessment:** Local departments may participate in Part H evaluations and assessments for children and families being served by DSS by identifying children potentially eligible for Part H services, assessing the child's unique needs and the family's strengths, resources, and priorities.
- **Family Training and Counseling:** Local departments' caseworkers may provide family training and counseling, refer families for family training and counseling, or in some cases pay for family training and counseling for children and families eligible for those services.
- **Respite Care:** Local departments may provide or pay for respite care services for children and families when needed to prevent family disruption or alleviate abuse and neglect.
- **Service Coordination:** Local department caseworkers may provide service coordination assistance to families and children eligible for those DSS services.
- **Social Work Services:** Local departments may provide social work services to families and children eligible for those DSS services through making home visits to evaluate the child's living conditions and parent-child interaction, working with the problems in the family's living situation that affect the child's maximum

utilization of early intervention services, and identifying, mobilizing and coordinating community resources and services to enable children and families to receive maximum benefit from early intervention services.

- Transportation: Local departments may provide transportation and related services to families and children eligible for those DSS services to allow the family and child to participate in early intervention services.

Eligibility Criteria

Universal Access: eligible for services without regard to income including:

- Intake;
- Prevention and support services for families to prevent foster care placement;
- Child Protective Services;
- Foster Care/Adoption Services.

Income Maintenance: eligible due to receiving ADC, SSI, or Auxiliary Grants. Services are available within limits set by the local Board.

Eligibility Based on Income: eligible based on family income and size. Services are available within limits set by the local Board.

Financial Responsibility

Local departments of social services are obligated to fund and provide services based on eligibility and available funding. They may also access services through the Family Assessment and Planning Teams, using pooled funds available through the Comprehensive Services Act for At-Risk Youth and Families.

DEPARTMENT OF HEALTH

Services Offered

The Virginia Department of Health (VDH) offers Regional Child Development Clinics (CDCs) at 12 locations throughout the state providing multidisciplinary evaluations/assessments and short-term intervention for children of all ages with primary or secondary emotional, psychological or behavioral problems or developmental delays which may be indicators of such problems. VDH also provides a program for children with special health care needs, Children's Specialty Services (CSS), which includes regional clinics conducted at 27 locations throughout the state. CSS offers health assessments for specific medical conditions and rehabilitative and treatment services for

eligible children with those conditions. The services provided include medical procedures, hospitalizations, and care coordination as well as supplies, equipment and therapy. CSS provides the High Priority Infant Tracking Program (HPITP), the Virginia Hearing Impairment Identification and Monitoring System (VAHIIMS), Virginia Congenital Anomalies Reporting and Education System (VACARES) and the Newborn Screening Program. The HPITP is a centralized tracking program for children to age three with or at-risk for chronic health and development problems in selected cities and counties. Plans are being made to expand statewide with the other risk identification and tracking programs in an integrated effort. The VAHIIMS is a statewide program for the early identification and habilitation of hearing loss. VACARES was created to improve diagnosis and early treatment of children with disabilities and to help families find appropriate resources. The Newborn Screening Program identifies and tracks infants diagnosed with congenital metabolic and sickle cell diseases.

The local health departments in every city and county are units of VDH. Each provides well-child clinics; Women, Infants and Children (WIC) nutrition services; and home nursing care coordination for young children based upon local needs and available resources. The amount and extent of these services beyond a basic level varies among localities. In addition to routine and special medical care services, the local health departments provide screening, assessment, nutritional and nursing services which may be involved with the Part H Early Intervention program.

Staff from VDH state and local programs work with other local agencies in child find activities and development of IFSPs.

Eligibility Criteria

Any child from birth through age two, and enrolled in Medicaid or with family income below the federal poverty level, is eligible for the services available within the resource limits of the local health department that serves the area in which the child resides. Many local health departments may also serve older children under established VDH eligibility guidelines. CDCs serve any child who is referred.

The CSS program serves any referred Medicaid eligible or poverty-level child who is a Virginia resident and who meets the health-need criteria established for the specific CSS program identified in its published State Plan. Other children may be served by CSS based on family income and size. Services are free of charge to children meeting categorical eligibility and whose family income is below the poverty level. For other categorically eligible children a sliding fee scale is in effect for those families above the poverty level.

The eligibility requirements for HPITP parallel the at-risk and eligibility criteria for Part H. Eligibility requirements for the other identification and tracking programs are based on specific risk criteria and diagnoses.

Financial Responsibility

VDH and its local units are responsible to provide the indicated services within available resources to the eligible population.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Services Offered

The Department for the Visually Handicapped (DVH) offers an array of early intervention services for infants/toddlers who are blind or visually impaired, and their families, through its six local regional offices. Services include, but are not limited to:

- assistive technology: DVH offers assistive technology information related to infants with visual disabilities.
- implementation of child find activities: DVH staff maintain direct contact with medical personnel and infant programs.
- family training and counseling: DVH staff provide technical assistance and materials that parents use with their infant.
- participation in multidisciplinary evaluations/assessments: DVH staff provide vision related evaluations as part of the team.
- coordination of agency services: DVH staff work with the family's service coordinator to coordinate agency services with those of other service providers in the community.
- vision services and special instruction: DVH staff offer all vision services that are included in Virginia's Part H definition of vision services.
- development of Individualized Family Service Plans (IFSP): DVH staff participate on the IFSP team to help develop goals and strategies for the infant and her family.

Eligibility Criteria

Infants/toddlers, and their families, are eligible to receive early intervention services provided through the Department for the Visually Handicapped as specified in this agreement if the infants/toddlers have a visual disability and they meet Virginia's Part H Definition of Eligibility as outlined in Virginia's Part H Policies and Procedures.

Financial Responsibility

The Department for the Visually Handicapped is obligated to provide the specified early intervention services to the eligible population within available resources.

TECHNICAL ASSISTANCE

The DMHMRSAS, Department of Education, Department of Social Services, and the Department of Health provide technical assistance to their local counterparts in relation to responsibilities and participation in the Part H service system. In addition, the Department for the Visually Handicapped provides technical assistance to providers serving the visually handicapped. The Department for the Deaf and Hard of Hearing provides technical assistance to agencies providing direct services to infants and toddlers with hearing impairment, links local providers with interpreters, and provides direct telephone access for persons who are speech or hearing impaired through the Virginia Relay Center. The Department for Rights of Virginians with Disabilities, which protects and promotes the legal and human rights of infants, toddlers and their families, provides technical assistance to families through Client Advocates. Client Advocates help families understand their rights, access services, and serve as advocates for families. The Department of Medical Assistance Services provides technical assistance to providers of early intervention services on Medicaid reimbursement.

PRIVATE INSURANCE

As required by federal Part H regulations, all funding sources including federal, state, local and private sources (including Medicaid and Medicaid Managed Care plans and private insurance) must be utilized prior to using Part H funds. The Bureau of Insurance within the State Corporation Commission provides clarification on issues and questions regarding the use of private insurance to pay for Part H services. The Bureau of Insurance also investigates individual private insurance complaints pertaining to Part H services and other medical services.

CENTRAL DIRECTORY

The Department for Rights of Virginians with Disabilities is responsible for operating and maintaining Virginia's Central Directory hotline, First Steps. Parents and professionals may access First Steps by calling toll-free (800) 234-1448. The Department for Rights of Virginians with Disabilities provides 1) information concerning Virginia's Part H services for infants and toddlers with disabilities and 2) referral to local early intervention central points of entry and to

the Part H Parent Representative to those accessing the Central Directory hotline. In addition, DRVD maintains a listing of local early intervention resources which is available to the public.

CHILD FIND

Given the parallel requirements under Part B and Part H of IDEA, DMHMRSAS and the Department of Education accept joint responsibility to make every reasonable effort to locate and identify all infants and toddlers potentially eligible under Part H or Part B. Local ICCs follow policies and procedures to determine for each locality the most effective and efficient means of meeting this responsibility, including roles and responsibilities of individual agencies and programs. The Virginia Department of Health, in joint effort with the Lead Agency, is expanding the implementation of the High Priority Infant Tracking Program (HPITP) to assist in the identification and follow-up of children who are at-risk or who have disabilities. The Department for the Deaf and Hard of Hearing provides information to the public regarding identification of children with hearing impairments and will make or assist in making referrals to Part H services when identified children are infants or toddlers. All activities under this section are to be conducted at no cost to families. Disputes regarding financial or programmatic responsibility that cannot be resolved by the local ICC are to be submitted to the state level for resolution through the dispute resolution process contained in the Virginia Part H Policies and Procedures. As among the signatories to this Agreement, DMHMRSAS and Department of Education remain ultimately responsible for supervising the availability of Child Find initiatives.

TRANSITION

As required by the Virginia Part H Policies and Procedures, local ICCs follow local policies and procedures to meet federal Part H requirements including the amendments made by P.L. 102-119 for children transitioning to other services from the Part H program. Children who reach the age of two on or before September 30 of any given year and who meet Part B eligibility requirements as defined in the *Code of Virginia* and in accordance with *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* are eligible to receive special education and related services through their local school divisions.

It is the responsibility of the local Part H system to refer two-year-olds in a timely manner to each child's local school system. Timely referrals enable local school officials to determine eligibility and develop Individualized Education Plans (IEPs) prior to the start of the school year. Therefore, referrals shall be made by the Part H providers by April 1 unless local interagency procedures and agreements reflect other timelines which will result in the completion of the identification and IEP process prior to the opening of school. It will be the responsibility of local school systems to accept the referrals, determine eligibility, and have an IEP developed to begin services as close to the opening of school as appropriate for those children found eligible

for Part B services. If a two-year-old referred to the schools does not meet Part B eligibility requirements and this child still meets Part H requirements, then the Part H system is responsible for continuing to serve this child until his third birthday. Additionally, if the family of a child eligible for Part B services declines Part B services until the child reaches age three, Part H must continue to serve this child until his third birthday.

SERVICES FOR TWO-YEAR-OLD CHILDREN

The Department of Education continues to supervise the provision of free and appropriate public education to those children with disabilities from age two as stipulated in the *Code of Virginia* and in accordance with *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*. DMHMRSAS, under requirements of full implementation of the Part H program, continues to be ultimately responsible for payment and provision of services to two-year-old children with disabilities: (a) who are not eligible for special education services supervised by the Department of Education; (b) whose parent(s) elect to continue to receive Part H services until the child's third birthday; or (c) or who are not eligible for services from the Department of Education but who are identified to DMHMRSAS and who are eligible for services under Part H.

DISPUTE RESOLUTION

In the event of an intra- or inter-agency dispute about payment or other aspects of early intervention services, DMHMRSAS as Lead Agency for Part H is responsible for ensuring timely resolution. DMHMRSAS is also responsible for ensuring that services are provided to eligible children/families in a timely manner by implementing the payor of last resort procedures, pending the resolution of disputes among public agencies or service providers. The Lead Agency must be notified of such disputes. The Lead Agency forwards specific information concerning such disputes to both the Secretary of Health and Human Resources and the Secretary of Education who make a recommendation to the Governor regarding appropriate agency responsibility. The Governor assigns financial responsibility and designates the two Secretaries to carry out this responsibility. If, in resolving a dispute, the Governor determines that the assignment of financial responsibility was inappropriate, the Lead Agency, based on the Governor's determination, reassigns responsibility to the appropriate agency and makes arrangements for reimbursement of expenditures incurred by the agency originally assigned the financial responsibility.

All agencies involved agree to resolve their own disputes regarding financial responsibility according to procedures within their own agencies. If a dispute involves two agencies, resolution is reached through discussions between the agencies involved. If the dispute involves local or regional matters, the dispute is resolved, whenever possible, at those levels before it is

brought to the attention of state agencies. If agencies are unable to resolve their own disputes, a written request is made to the Commissioner of the Lead Agency and the dispute is referred to both the Secretary of Health and Human Resources and the Secretary of Education. If disputes cannot be resolved by the Secretaries within 30 days, the dispute is referred to the Governor.

The provisions of this section of the agreement, entitled Dispute Resolution, do not apply to the Bureau of Insurance within the State Corporation Commission, notwithstanding anything else to the contrary in this agreement.

TERM OF THE AGREEMENT

This agreement goes into effect on the date of signature and is in effect until revised by agreement of all parties.

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SIGNATURES of PARTICIPATING AGENCIES

Susan Walker Buckland, Director
Department for the Deaf and Hard of Hearing

Date

Clarence Carter, Commissioner
Department of Social Services

Date

Randolph L. Gordon, Commissioner
Department of Health

Date

W. Roy Grizzard, Commissioner
Department for the Visually Handicapped

Date

Alfred W. Gross, Commissioner
Bureau of Insurance, State Corporation Commission

Date

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Timothy A. Kelly, Commissioner
Department of Mental Health, Mental
Retardation, and Substance Abuse Services

Date

Richard La Pointe, Superintendent of
Public Instruction
Department of Education

Date

Sanda Reen, Director
Department for Rights of Virginians
with Disabilities

Date

Joseph Teefy, Director
Department of Medical Assistance Services

Date

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COMMITMENT OF RESPECTIVE SECRETARIES

Given the importance of developing a comprehensive, interagency system of early intervention services, we hereby commit our respective agencies to collaborate in all areas which will enhance this multi-agency system.

Robert C. Metcalf
Secretary of Health and Human Resources

Date

Beverly H. Sgro
Secretary of Education

Date

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